IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2521 OF 2001

The Indian National Press)
(Bombay) Limited, a company)
incorporated under the provisions)
of the Companies Act, 1913, having)
its office at Free Press House,)
215, Free Press Journal Road,)
Nariman Point,)
Mumbai - 400 021.).. Petitioner

Versus

1. Shri Vasudeo Atmaram Tarey,)
of Mumbai Indian Inhabitant,)
residing at 1/31 Veerchand Niwas)
Acharya Dhonde Marg, Sewree,)
Mumbai - 400 015.)

2. Shri M.L.Harpale,)
Learned Member,Industrial Court,)
having his office at New)
Administrative Building,)
Bandra (East),)
Mumbai - 400 051.).. Respondents

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Shri C.U.Singh i/b Sanjay Udeshi & Co. for the Petitioner.

None for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 11th August, 2004.

ORAL JUDGMENT :

1. Heard the learned advocate for the petitioner.

None present for the respondents though served.

Perused the records.

2. The petitioner challenges the judgment and order dated 31st August, 2001 passed by the Industrial Court, Mumbai, in Complaint (ULP) No.877 of 1991. By the impugned judgment, the Industrial Court has allowed the complaint filed by the respondent No.1 accusing the petitioner company having adopted unfair labour practice under Items 5, 9 and 10 of the Schedule IV of the MRTU & PULP Act, 1971, further directing to the petitioner company to withdraw the retirement memo issued to the respondent no.1 on 17th January, 1991 and to pay wages for a period of two years i.e. upto 26th March, 1993 deducting therefrom the ex-gratia payment of the amount made in lieu of

the wages payable for four months.

3. The facts in brief relevant for the decision are that the respondent No.1 was employed with the petitioner company since 1952. As per the practice prevailing at the relevant time, no appointment letter was issued to the respondent no.1 at the time when he was appointed and the practice of issuance of appointment letter commenced from the year 1976. The respondent No.1 having attained the age of 58 years was informed about the attainment of superannuation age which was initially sought to be disputed by the respondent No.1 while contending that his date of birth was not correctly recorded in his service records. However, subsequently, the said respondent arrived at a settlement with the petitioner and accordingly accepted the retirement benefits on completion of his age of 58 years. Along with that, the wages for additional four months were also paid to the said respondent. Confirming the said acceptance regarding the retirement benefits and four months' wages, the respondent issued a letter dated 26th March, 1991. However, on 27th June, 1991, he filed complaint under the said Act accusing the petitioner having indulged in unfair labour practice on account of denial of right of the respondent No.1 to be in the employment till he attained the age of 60 years which, according to him, was the age of superannuation in terms of Clause 25 of the Standing Orders applicable

to the respondent No.1 herein.

4. The Industrial Court, after hearing the parties and considering the evidence led by both the parties, held that the respondent No.1 had accepted the legal dues without recording any protest and there was no evidence to disclose that the respondent No.1 was made to accept the said retirement and legal dues under duress or coercion by the petitioner, but the provisions of law contained in the model standing orders applicable to the respondent No.1 disclosed the retirement of the employees being permissible on completion of 60 years of age, and there being no estoppel against the statutory provision, the respondent No.1 is justified in complaining against the petitioner having indulged in unfair labour practice against the respondent No.1 as alleged and, therefore, passed the impugned order.

5. The impugned order is sought to be challenged on various grounds including the ground that the principle of estoppel can be attracted only in cases where the statute contains mandatory condition which cannot be waived by the party and the Clause 25 of the Model Standing Orders nowhere discloses any such mandatory provision. Reliance is placed in the unreported decision in **Shankar Sakharam More v. Dr.Beck & Co. & Anr.** in Writ Petition No.3815 of 1989 delivered on 23rd March, 1995 as well as in the

matter of **Dayabhai Fakhir Patel v. The Bombay Burmah Trading Corpn.Ltd. & Ors.** reported in (1987) I CLR 57.

6. It is not necessary to refer to all the grounds on which the impugned order is sought to be challenged and suffice to consider the matter in relation to the sole finding arrived at by the Industrial Court based on which it has been held that the petitioner company is stated to have indulged in unfair labour practice on account of failure on its part to comply with its obligation under the clause 25 of the Model Standing Orders which prescribed retirement age to be 60 years in the absence of agreement to the contrary and that there had been no such agreement between the parties contrary to the said provision regarding the retirement age to be of 60 years. It is pertinent to note that the Industrial Court, as observed above, has clearly arrived at the finding that there was neither any coercion nor any duress by the petitioner upon the respondent No.1 to accept the settlement and/or retirement on attaining the age of 58 years and the letter dated 26th March, 1991 accepting the settlement or retirement age to be 58 years, forwarded by the respondent No.1, was issued voluntarily and knowing fully well the consequences for issuance of such letter. It is also to be noted that undisputedly, the respondent No.1 was a General Secretary of the Union and was well conversant with

the rights of the workmen as well as the consequences of issuance of letter accepting the confirmation of agreement with the employer.

7. The Clause 25 of the Model Standing Orders provides that the age of retirement or superannuation of the workmen may be 60 years or such other age as may be agreed upon between the employer and workmen by an agreement, settlement or award which may be binding on the employer and the workmen under any law for the time being in force. Evidently, it provides that in the absence of any agreement or settlement or award of binding nature upon the parties, the age of retirement or superannuation of the workmen may be 60 years. As far as the term "agreement" used in the said clause, it is to be noted that the Model Standing Orders nowhere defines the said term to mean other than what is understood under the Indian Contract Act. In fact, the Clause 25 of the Model Standing Orders applicable to the parties to the petition is similar to the Clause 27 of the Model Standing Orders applicable to the workmen doing manual or technical work, and was the subject matter of interpretation in the unreported decision in the matter of **Shankar Sakharam More (supra).** In the said decision, it was held that in the absence of indication in the Industrial Employment (Standing Orders) Act, 1946 that any special meaning needs to be ascribed to the term 'agreement', it would not be unreasonable to take the view that the term

"agreement" has the same meaning given to it under the principles of Contract Law and that an agreement can be brought about by conduct of parties and also can be culled out by way of implication.

8. As already observed above, the term "agreement" has not been defined under the Model Standing Orders framed under the Bombay Industrial Employment (Standing Orders) Rules, 1939. The term "agreement" in Clause 25 of the Model Standing Orders, therefore, will have to be understood under the provisions of Contract Law as has been held in Shankar More's case (supra). It is also to be noted that such an agreement can also be brought about by the conduct of the parties or can be revealed from the unchallenged and uncontroverted practice followed for number of years by the parties in relation to any service condition which would include retirement or superannuation age. Bearing the same in mind, and considering the materials on record including the findings arrived at by the Industrial Court in the impugned order, it is apparent that the respondent No.1 apart from having accepted the retirement at the age of 58 years, while challenging the said decision of the Management on the point of retirement, did not bring on record any material in support of his allegations. Though it was sought to be contended in the course of recording of evidence that some 4 or 5 employees were sought to be retired at the age of 60

years, the respondent No.1 could not produce any material in support of the said contention and, on the contrary, clearly admitted that he had no documentary evidence to prove that any employee of the petitioner company was retired at the age of 60 years. Besides, one of the employees, who was alleged to have been retired at the age of 60 years, was examined by the petitioner as witness, who himself has confirmed the fact that he had retired at the age of 58 years. Simultaneously, the petitioner has produced the list of employees disclosing that all of them had retired at the age of 58 years. There was no material placed on record by the respondent No.1 to counter the said contention of the petitioner.

9. Once it was accepted by the respondent No.1 that there was no letter of appointment issued in his favour disclosing his age of retirement nor the clause 25 of the Standing Orders discloses that the age of 60 years to be invariably applied to all workmen, and, on the contrary it leaves the parties with the option to arrive at an agreement relating to superannuation age and the respondent No.1 having accepted the settlement and opted to retire at the age of 58 years, it cannot be said that the age of superannuation was 60 years. It is also to be noted that even the employees who were issued letter of appointment since 1976 by the petitioner company disclosed the retirement age is to be 58 years. Taking into consideration all these

factors in totality disclose the practice, and, consequently, the agreement within the meaning of the said term under Clause 25 of the Model Standing Orders to the effect that the retirement age of the workman was 58 years.

10. Once it is revealed that the retirement age in terms of the clause 25 of the Standing Orders was 58 years, the finding arrived at by the Industrial Court about the applicability of the principle of estoppel cannot be sustained. There remains no scope for invoking any such principle in the facts and circumstances of the case, and for the same reason, it is not necessary to go into all other grounds sought to be raised in relation to the said principle of estoppel on behalf of the petitioner. The matter could be conveniently disposed of on the above point without there being any need to go into other issues.

11. As rightly submitted by the learned advocate for the petitioner, the finding by the Industrial Court that some of the employees were retired at the age of 60 years is clearly contrary to the materials on record and cannot be sustained. The same was arrived at without any support from the materials on record.

12. For the reasons stated above, the petition succeeds and the impugned judgment and order dated

31st August, 2001 passed by the Industrial Court, Mumbai, in Complaint (ULP) No.877 of 1991 cannot be sustained and is liable to be quashed and set aside, and the same is hereby quashed and set aside. Rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR,J)